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Attorneys for Plaintiff
Gor Gevorkyan

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Gor Gevorkyan on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

Bitmain, Inc., Bitmain Technologies, Ltd. and
DOES 1 to 10,

Defendants.

) Case Number: 3:18-cv-07004-JD

) **PLAINTIFF'S CASE MANAGEMENT**
) **STATEMENT AND REQUEST TO TAKE**
) **THE CMC OFF-CALENDAR PENDING**
) **SERVICE ON THE REMAINING**
) **DEFENDANT WHO IS BEING SERVED**
) **VIA FOREIGN SERVICE**

) Date: March 7, 2019
) Time: 10:00 a.m.
) Courtroom: 11, 19th Floor
) Judge: Hon. James Donato
)

PRELIMINARY STATEMENT

Plaintiff requests that the CMC be taken off-calendar as there currently is no defendant who has appeared in this action.

On February 14, 2019, Plaintiff Gevokyan dismissed Bitmain, Inc., the only defendant who has appeared in this action. ECF. 23. On February 20, 2019, Plaintiff filed a Notice of Motion and Motion for Extension of Time To Serve Foreign Defendant Bitmain Technologies, Ltd and to Continue Case Management Conference Dkt. No. 24. As Plaintiff explained, Defendant Bitmain Technologies is a Chinese corporation. Plaintiff is in the process of effecting foreign service on Bitmain Technologies pursuant to Fed.R.Civ.P 4(f) via the Hague Convention. Plaintiff has translated the complaint into Chinese. However, the papers to be served must be presented to the Chinese Central Authority, which then must transmit the documents to local authorities for service upon the Bitmain Technologies, Ltd. In Beijing. It is Plaintiff's understanding that service of process through the Chinese Central Authority can take at least eight months (*see e.g.*, ABA Section of Litigation 2012 Section Annual Conference, April 18-20, 2012: ABA Chinese Drywall Panel, "Service of Process in China") and as long as eighteen months. To accommodate this extraordinary time to perfect service, Plaintiff has requested an extension of time for service of process pursuant to Fed.R.Civ.P. 6(b)(1), which provides: "When an act may or must be done within a specific time, the court may, for good cause shown, extend the time." Dkt. No. 22.

In that same filing, Plaintiff also noted that the CMC in this matter is currently scheduled for March 7, 2019. Since defendant Bitmain Technologies Ltd. has not yet appeared in the action and the other named defendant, Bitmain, Inc., has been dismissed without prejudice (Dkt. No. 23), Plaintiff noted that the Court may wish to reschedule the case management conference to a later date. Dkt. No. 22.

Accordingly and for the foregoing reasons, Plaintiff requests that the CMC currently scheduled for March 7, 2019 be taken off calendar or rescheduled to March 28, 2019, which is the hearing date set for Plaintiff's Motion.

1 If the Court still wishes to proceed on March 7, 2019 as scheduled, Plaintiff's Case
2 Management Statement is below.

3 **1. Jurisdiction and Service:**

4 **Plaintiff's Position:**

5 This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(1) because there are
6 more than 100 class members and the aggregate amount in controversy exceeds \$5 million.
7 Defendant Bitmain, Inc. (the US entity) has been served. Defendant Bitmain Technologies Ltd.
8 ("Bitmain Technologies"), a Chinese company, has not been served. Plaintiff has requested that
9 counsel for Bitmain Inc, who is also representing Bitmain Technologies, agree to accept service
10 on behalf of Bitmain Technologies. By agreeing to accept service, Bitmain Technologies would
11 not waive any defenses, including jurisdiction. To date, counsel for Bitmain, Inc. has not agreed
12 to accept service on behalf of the Chinese entity. Plaintiff notes that Bitmain Technologies has
13 previously availed itself of United States courts and is the plaintiff in an action entitled *Bitmain*
14 *Technologies Ltd. v. John Doe*, Case No. No. 2:18-cv-1626 pending in the Western District of
15 Washington.

16
17 As there is currently no agreement regarding acceptance of service as to Bitmain
18 Technologies, Plaintiff is in the process of effecting foreign service on Bitmain Technologies
19 pursuant to Fed.R.Civ.P 4(f) via the Hague Convention. Plaintiff has translated the complaint
20 into Chinese. However, the papers to be served must be presented to the Chinese Central
21 Authority, which then must transmit the documents to local authorities for service upon the
22 Defendant. It is Plaintiff's understanding that service of process through the Chinese Central
23 Authority can take at least 8 months (*see e.g.*, ABA Section of Litigation 2012 Section Annual
24 Conference, April 18-20, 2012: ABA Chinese Drywall Panel, "Service of Process in China") and
25 as long as 18 months and will certainly exceed the 90-day period allotted for service within the
26 United States under Fed.R.Civ.P. 4(m). To accommodate this extraordinary time to perfect
27 service, Plaintiff has requested an extension of time for service of process pursuant to
28

1 Fed.R.Civ.P. 6(b). Rule 6(b)(1) provides that, “when an act may or must be done within a
2 specific time, the court may, for good cause shown, extend the time.”

3 **2. Facts**

4 **Plaintiff’s Position:**

5 Defendant Bitmain Technologies manufactures and sells machines called “crypto
6 currency miners” or Application Specific Integrated Circuits (“ASIC devices”) that are used to
7 generate virtual cryptocurrency, including Bitcoin. Bitmain Technologies is one of the largest
8 virtual cryptocurrency mining hardware companies in the world with profits of over \$900 million
9 for the first six months of 2018. Bitmain Technologies offers a variety of mining hardware
10 under the Antminer brand and power supply units customized for Bitmain Technologies’ mining
11 hardware to enhance mining performance. As Bitmain Technologies has explained in the
12 offering document for its proposed Hong Kong IPO (“Hong Kong Application of Proof for
13 Bitmain Technologies Holding Company”): “For most cryptocurrencies that require a computing
14 mining process to be released or traded, mining hardware are utilized to resolve the computing
15 process. The global cryptocurrency mining hardware industry consists of all the hardware used
16 for mining cryptocurrencies under various kinds of chip architecture and algorithms, mainly
17 dominated by ASIC-based and GPU-based mining hardware with high computing power.”
18 Bitmain Technologies claims that “our innovation in ASIC chips to improve both performance
19 and cost-effectiveness has enabled us to deliver high computing power and great power-efficient
20 mining hardware at reasonable prices.”
21

22 Bitmain Technologies also manages cryptocurrency mining farms or storage facilities
23 that are technologically equipped to mine cryptocurrencies whereby Bitmain Technologies offers
24 customers custodian services for their mining hardware. Bitmain Technologies also operates
25 mining pools where cryptocurrency miners contribute their computing power and split mining
26 rewards. The company also mines cryptocurrency for itself. Bitmain Technologies is one of the
27 largest competitors of the cryptocurrency miners who purchase its ASIC devices.
28

1 Plaintiff purchased Antminer S9 ASIC devices (“Antminer”) in approximately January
2 2018. Antminer devices distributed during the proposed class period including those sold to
3 Plaintiff were configured in such a way that they would begin mining cryptocurrency for the
4 benefit of Bitmain Technologies rather than the purchaser of the device. Moreover, at the same
5 time that Bitmain Technologies implemented the configuration generating income for itself,
6 Bitmain Technologies changed the devices to operate at full power mode during the lengthy
7 reconfiguration process that purchasers had to go through in order to obtaining the benefits of the
8 devices for themselves. Prior to that change, the devices operated in low power mode to conserve
9 energy until purchasers re-configured the devices. The devices require an extraordinary amount
10 of power to operate (approximately 1400 watts). Until the configuration process for each device
11 was complete, Bitmain Technologies laid the high operating costs at the feet of Plaintiff and
12 other class members, while cashing in on the virtual cryptocurrency mined by those devices.

13 In essence, Bitmain Technologies is hijacking class members’ devices and using
14 customers’ own machines to mine for cryptocurrency for Bitmain Technologies’ benefit at class
15 members’ expense.

16 Based on further investigation conducted since the filing of the original complaint,
17 Plaintiff will be filing an amended complaint which lays out Bitmain Technologies’ scheme in
18 further detail.

19 **3. Legal Issues**

20 **Plaintiff’s Position:**

21 Plaintiff alleges that Bitmain Technologies’ conduct violates California’s Unfair
22 Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (“UCL”), as well as the numerous
23 California laws that prohibit it from engaging in a scheme whereby class members are tricked
24 into mining virtual cryptocurrency for the benefit of Bitmain Technologies instead of for
25 customers’ own benefit. Accordingly, the key legal issues are: whether Bitmain Technologies
26 engaged in unlawful, unfair, or fraudulent business practices in violation of California Business
27 and Professions Code §§ 17200 et seq.; whether Bitmain Technologies was unjustly enriched at
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the expense of the class; whether Bitmain Technologies committed conversion, trespass to chattel; and whether Plaintiff and the other Class Members are entitled to restitution or other relief.

4. Motions

Plaintiff's Position:

Plaintiff's Motion for Extension of Time To Serve Foreign Defendant Bitmain Technologies, Ltd and to Continue Case Management Conference (Dkt. No. 24) is the only pending Motion. Plaintiff intends to file a motion for class certification and a motion for summary judgment if appropriate and any motions to compel as necessary.

Defendant's Position:

5. Amendment of Pleadings

Plaintiff's Position:

Plaintiff intends to file an amended complaint by no later than April 8, 2019.

6. Evidence Preservation

Plaintiff has reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines") and has taken reasonable and proportionate steps to preserve evidence relevant to the issues reasonably evident in this action.

7. Disclosures

Plaintiff will provide Fed. R. Civ. P. 26(a)(1)(A) disclosures following service on Bitmain Technologies.

8. Discovery

Plaintiff's Position:

At this time, Plaintiff does not anticipate any proposed limitations or modifications of the discovery rules. Certain modifications (e.g., with respect to the time necessary to respond to written discovery requests) may be required when the Chinese entity appears in the action. As set forth below regarding Scheduling, it is premature to enter a comprehensive discovery plan before Defendant Bitmain Technologies has been served or appeared in the action and before the

1 parties have a realistic sense of how long it will take for the Chinese entity to participate in
2 discovery.

3 **9. Class Actions**

4 **Plaintiff's Position:**

5 After the parties engage in sufficient discovery, Plaintiff anticipates filing a motion for
6 class certification. However, it is premature to set any schedule before defendant Bitmain
7 Technologies appears in the action.

8 **10. Related Cases**

9 There are no related cases or proceedings pending before another judge of this Court, or before
10 another court or administrative agency.

11 **11. Relief**

12 **Plaintiff's Position:**

13 Plaintiff seeks, inter alia, injunctive relief, restitution, actual damages, disgorgement of profits,
14 attorneys' fees, costs, and pre- and post-judgment interest. Plaintiff believes that it is premature
15 at this time to determine damages with any accuracy, given the fact that the parties have not yet
16 conducted discovery.

17 **12. Settlement and ADR**

18 **Plaintiff's Position:**

19 Pursuant to Civil Local Rule 16-8 and ADR L.R. 3-5(b), Plaintiff filed an ADR
20 Certification on January 31, 2019. (Dkt. No. 24).

21 **13. Consent to Magistrate Judge for All Purposes**

22 The parties have not consented to have a magistrate judge conduct all further
23 proceedings, including trial and entry of judgment.

24 **14. Other References**

25 **Plaintiff's Position:**

26 This case is not suitable for reference to binding arbitration, a special master, or the
27 Judicial Panel on Multidistrict Litigation.
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15. Narrowing of Issues**Plaintiff's Position:**

Other than service on Bitmain Technologies as discussed above, Plaintiff has not identified any issues that are suitable for narrowing by agreement of the parties at this time.

16. Expedited Trial Procedure

The parties do not believe that this case is suitable for handling under the Expedited Trial Procedure of General Order No. 64 Attachment A.

17. Scheduling**Plaintiff's Position:**

It is premature to enter a scheduling order before Defendant Bitmain Technologies has been served or appeared in the action and before the parties have a realistic sense of how long it will take for the Chinese entity to participate in discovery. Further, it is Plaintiff's position that setting a schedule and deadlines for discovery for purposes of trial is premature until the Court has decided the issue of class certification.

18. Trial**Plaintiff's Position:**

As currently pled, this case will be tried to the court. Plaintiff estimates seven (7) Court days. Plaintiff respectfully requests that the Court defer setting a trial schedule until after the Court has decided class certification. Plaintiff proposes that the parties meet and confer within fourteen (14) days of the Court's entry of an order addressing the issue of class certification and submit a further proposed case management schedule as soon as practicable thereafter, which will, among other things, address: (i) a proposed motions cut-off date, including dispositive motions and motions in limine; (ii) a proposed date for a final pre-trial conference and final pretrial conference order; and (iii) a proposed date for trial.

19. Disclosure of Non-party Interested Entities or Persons

Plaintiff has filed its Disclosure of Non-Party Interested Certification per Civil Local Rule 3-15.

1 **20. Professional Conduct**

2 All attorneys of record for Plaintiff have reviewed the Guidelines for Professional
3 Conduct for the Northern District of California.

4 **21. Other**

5 There are no other such matters.

6
7 DATED: February 28, 2019

FRONTIER LAW CENTER

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9 By: /s/ Karo G. Karapetyan
10 Karo G. Karapetyan
11 Attorney for Plaintiff
12 Gor Gevorkyan
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